S. B. Civil Second Appeal No.390/2004.
(Kushal Karan v. Lrs. Of Anantram & Others)

Date of Order: :15-01-2007

HON'BL MR JUSTICE PRAKASH TATIA

Mr. R.R.Nagori, for Appellant.

Heard learned counsel for the appellant.

The appellant is aggrieved against the judgment and decree of the First Appellate Court, by which the Appellate Court allowed the appeal of the defendants and dismissed the suit of the plaintiff. The appellant is also aggrieved against the judgment and decree of the trial Court, by which the trial Court only partly decreed the suit of the plaintiff for mandatory injunction and did not grant the full relief to the appellant-plaintiff and further aggrieved against the judgment and decree, by which the First Appellate Court dismissed the plaintiff-appellant's appeal against the trial Court judgment and decree dated 15th May, 1989, denyuing full relief to the appellant – plaintiff.

It appears from the facts of the case that as back as in the year, 1950, the land in dispute was purchased by the defendant. Before that, his prececessor-in-title obtained permission from the Municipal Board, Jodhpur for constructing a 'Chabutari' measuring 3.33' x 12.5' of one side and 4.8' x 11.7' of the other

side. This matter was taken upto the Court of 'Ijlas Khaas' and the 'Ijlas Khaas', by judgment dated 10th May, 1947, upheld the permission to the defendants predecessor for raising construction of latrine and bath room over the 'Chabutari' in question.

It is alleged that in the year, 1950, the defendant purchased the property and by giving wrong facts obtained 'Patta' for the more land . This more land is 2.6' x 5.9' in total. For this, 'Patta' was issued by the Municipal Board in the year, 1950. In the year, 1969, the defendant obtained the permission for raising construction and the plaintiff being aggrieved against the said permission, appraoched the Competent Authority and obtained the order of demolition of structure, but those orders were not executed. On 10th August, 1970, the plaintiff filed a suit for permanent injunction which was decreed by the trial Court in part only vide judgment and decree dated 15th May, 1989, but other relief to the plaintiff was also denied by the First Appellate Court. The First Appellate Court accepted the appeal of the defendant legal representatives vide judgment and decree dated 15th October, 2003.

Learned counsel for the appellant vehemently submitted that the final court, at that time, was the 'Ijlas Khaas' and, by that Court, once it has been held that the defendant

predecessors are entitled to have 'Chabutari' of a particular measurement, then the Municipal Authorities could not have granted 'Patta' for more land. It is also submitted that 'Patta' of more land (measuring 2.6' x 5.9') was granted in the back of the plaintiff and by that, the Municipal Board committed illegality. It is also submitted that because of the construction of the defendant, the plaintiff sufferred irreparable injury. It appears from the facts and grounds given by the two courts-below that both the courts-below considered these facts in detail and, thereafter, held that the plaintiff is not eneitlted to any relief.

In view of the finding of fact recorded by the two courts-below in a matter where the relief of injunction with respect to the land for which 'Patta' was granted in 1950 and permission was granted in 1969 and construction has already been raised, I do not find any question of law involved in this appeal. Hence the appeal is dismissed.

(PRAKASH TATIA),J.

Scd.